IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 945 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ASIF MEHBOOBMIYA SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 945 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR HL JANI ASTT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/07/2001

ORAL JUDGEMENT

#. Heard Mr.H. R.Prajapati, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP appearing on behalf of the respondents.

#. In the present petition, the order of detention dated 29th December, 2000 which has been actually effected on 3rd January, 2001 has been challenged by the petitioner under Article 226 of the Constitution of India. The order of detention has been passed by the Police Commissioner, Surat City against the petitioner under Section 3[1] of the PASA Act. The grounds of detention are communicated to the petitioner under Section 9[1] of the PASA Act. The detaining authority has claimed privilege under Section 9[2] of the PASA Act. According to the grounds of detention, two offences registered against the present petitioner under Section 143, 148, 149, 323, 324, 504, 307 and 34 of IPC read with Section 135 of Bombay Police Act. The date of offence registered is dated 26th August, 2000 and 19th September, 2000. The statements of secret witnesses recorded on 13th October, 2000 and 28th November, 2000 are verified by the detaining authority. The petitioner was enlarged on regular bail by the competent court and the petitioner has been considered as a dangerous person under Section 2[c] of the PASA Act. Two unregistered offence have also been noted by the detaining authority from the statements of the secret witnesses, which are of dated 17th September, 2000 and 25th August, 2000. It is necessary to note that the co-detenu of the present petitioner namely - Ashif Babuddin @ Bapti Sheikh against whom the detention order has also been passed by the concerned detaining authority on date 29th December, 2000, which in fact effected on 3rd January, 2001. Even according to the case of the co-detenu, the statements of the secret witnesses were recorded on 9th October, 2000 and verified on 16th December, 2000 by the detaining authority. Two unregistered offences noted dated 20th August, 2000 and 10th September, 2000 against the co-detenu. The co-detenu was also released on bail and against the co-detenu, as peer the grounds of detention, very same two registered offence dated 26th August, 2000 and 19th September, 2000 are registered under Section 143, 148, 149, 323, 324, 504, 307 and 34 of IPC read with Section 135 of Bombay Police Act. The name of co-detenu is also mentioned on pg.2 of the FIR, wherein it is mentioned that co-detenu - son of Ashif Babuddin @ Bapti Sheikh is also mentioned. Thus, in those these cases, two registered offences have been taken into account and the statements of secret witnesses have been taken into account including two unregistered offence against the present petitioner as well as the co-detenu and thereafter the order of detention has been passed. The respondents have filed a detailed affidavit in reply in the preset petitioner and no reply has been filed in respect of the matter pertains to the co-detenu.

#. Learned advocate Mr.Prajapati appearing on behalf of the petitioner has submitted that there are various contentions raised in the petition challenging the detention order but according to him, one contention of delay in passing the detention order is enough to set aside the detention order. He submitted that looking to the last offence registered against the present petitioner dated 19th September, 2000 and in respect of the co-detenu dated 10th September, 2000, including two unregistered offences dated 17th September, 2000 and 25th August, 2000 are also in respect of the co-detenu so also the unregistered offence is also registered on 20th August, 2000 and 10th September, 2000. In both cases, including the petitioner and the co-detenu, date of registered offences are same but the only difference is in the date of the unregistered offence. After taking into account the date of registered offence dated 19th September, 2000, the order of detention has been passed on 29th December, 2000 which actually effected on 3rd January, 2000. Therefore, learned advocate Mr.Prajapati has submitted that there is delay in passing the detention order from the date of the [last offence registered on 19th September, 2000 against the present petitioner and co-detenu. He also drawn attention of this Court to the contention which has been raised by the petitioner in Ground- [u] at pg.13 that there is great delay in passing the order of detention from the date of last offence registered against the petitioner and this delay has not been satisfied the subjective satisfaction arrived by the detaining authority. Against this, the respondent - detaining authority has filed a detailed reply and the learned advocate Mr.Prajapati has also drawn attention of this Court in para-15 of the reply to the effect that the detaining authority has admitted this fact in the reply to the effect that "I say and submit that there is great delay in passing the order of detention that the order of detention which placed on 29-12-2000 by the statements of witnesses are recorded on 13-10-2000 which refers to the incident dated 25-8-2000 and 17-9-2000. Hence, therefore after perusing contents of the statement of confidential witnesses I arrived at subjective satisfaction by passing the order of detention." Therefore, in view of the admission of the detaining authority to the effect that there is great delay in passing the detention order from the last offence registered against the petitioner as well as co-detenu dated 19th September, 2000. He relied upon the decision of this Court in reported case 1997 [1] GLH 381.

#. Learned AGP Mr.H.L.Jani, appearing on behalf of the

respondents has submitted that no doubt that there is admission at pg.35 in para-15 by the detaining authority in respect of the delay in passing the detention order from the date of last offence. However, he submitted that looking to the offence committed by the present petitioner as well as the co-detenu and considering the seriousness of the offence, there were compelling circumstances after considering the statements of the confidential witnesses to pass the detention order. Therefore, he submitted that looking to the facts and circumstances as well as material on record, there was no option with the detaining authority except to pass the detention order, otherwise, activities of the petitioner and co-detenu will definitely adversely affected the situation of the public order. Therefore, according to him, the order of detention is legal and valid, which does not require any interference by this Court.

#. I have considered the submission of learned advocates for the parties and keeping in mind the facts of the present case that specific contention has been raised by the petitioner in Ground [u], there is delay in passing the detention order but such delay has not been explained by the detaining authority at the time of filing of the detailed affidavit in reply, but on the contrary, the detaining authority has admitted this fact that there is great delay in passing the detention order. Therefore, considering this fact that the last offence registered against the present petitioner and co-detenu on date 19th September, 2000 and the order of detention has been passed on 29th December, 2000, therefore, admittedly there is delay of more than 3 months in passing the detention order, though affidavit in reply has been filed by the detaining authority, the delay remained unexplained by the detaining authority and not only but on the contrary, the detaining authority has admitted this act that there is delay in passing the detention order. In light of this fact and considering the observations made in para-21 of above referred case in 1997 [1] GLR 381, which runs as under :-

> "21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone

through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 [2] Suppli. SCC 61."

#. In light of this discussion and the observations made by this Court so also considering the facts and circumstances of the present case in respect of the petitioner so also the case of the co-detenu, according to my opinion, delay in passing the detention order which admittedly remained unexplained and when the detaining authority has admitted the delay without explaining the same, then order of detention requires to be quashed and set aside.

#. In the result, the present petition is allowed. The detention order dated 29th December, 2000 actually effected on 3rd January, 2001 passed by the Police Commissioner, Surat City is hereby quashed and set aside. The present petitioner - detenu - ASIF MEHBOOBMIYA SHEIKH is ordered to be set at liberty if he is not required in any other case. Rule is made absolute with no order as to costs.

Date : 18-7-2001 [H.K.Rathod, J.]

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